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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL WRIT PETITION NO.275 OF 2021

John @ Ravi Ramesh Govar (In jail),
Age 30 years, r/o Vijaynagar,
Trafail Akot, district Akola. **Petitioner.**

:: VERSUS ::

1. The District Magistrate, Akola,
District Akola.

2. The State of Maharashtra,
Through Additional Chief
Secretary to Government of
Maharashtra, Mantralaya, Home
Department Mantralaya, Mumbai.

3. The Superintendent, Akola
District Prison Akola, district Akola. **Respondents.**

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Ms Jayshree Tripathi, Counsel for the Petitioner.
Shri S.S.Doifode, Additional Public Prosecutor for
Respondents/State.

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CORAM : V.M.DESHPANDE & AMIT B.BORKAR, JJ.
DATE : OCTOBER 05, 2021

ORAL JUDGMENT (Per : Amit B.Borkar, J.)

1. Heard learned counsel Ms Jayshree Tripathi for the
petitioner and learned Additional Public Prosecutor Shri
S.S.Doifode for respondents/State.

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2. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel for parties.

3. By this writ petition, the petitioner challenges order of detention dated 11.12.2020 bearing No.Desk-2/HA/Home/WS-798/2020.

4. Facts giving rise to the present writ petition are as under:

The petitioner was served order of detention with grounds dated 11.12.2020 annexing copy of 61 documents. The petitioner, therefore, on 22.2.2021 sent a representation to the State Government for revocation of the order of detention. The said representation was rejected by order dated 28.4.2021. The petitioner has, therefore, challenged the order of detention on various grounds.

5. During course of hearing, learned counsel for the petitioner pressed two grounds which are ground Nos.h and k, which read as under:

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“(h) The petitioner says and submits that a representation dated 22.2.2021 of the Petitioner was sent to the State Government through Superintendent Akola District Prison Akola for expeditious consideration and communication. The Petitioner further submits that in the said representation there was a specific request made to supply vital documents of relied on CR NO.666/2020 i.e. statements of the informant and her husband along with other witnesses, Seizure Panchanama and Search Panchanama to enable the Petitioner to make effective representation. In spite of specific request made to the detaining authority so far the Petitioner has not been supplied with documents requested for. As such Petitioner’s right to make effective representation guaranteed under Article 22(5) of the Constitution of India is violated. As held in a number of judgments of Apex Court and this Hon’ble Court that non supply of documents requested by the detenu, in spite of specific request made by the Petitioner, vitiates the detention order. The order of detention is illegal and bad in law liable to be quashed and set aside.

(k) The Petitioner says and submits that a representation dated 22.2.2021 was sent to the State Government through Superintend District Prison Akola for expeditious consideration and revocation of the order of detention. So far no communication has been received from the said authorities as regards to the consideration and revocation of the order of detention, thus there is a gross delay in consideration and communication of the result of the representation. The concerned authorities are called upon to explain the delay, if any, to the satisfaction of this Hon’ble Court by filing affidavit. As such for delay in consideration and communication of the representation of the Petitioner, the order of detention

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will be held to be illegal and bad in law since right to make representation guaranteed under Article 22(5) of the Constitution of India is violated. The order of detention is illegal and bad in law liable to be quashed and set aside.”

6. This Court by order dated 23.3.2021 issued Notices to respondents. Respondent No.1 has filed affidavit dated 4.9.2021. and additional affidavit dated 6.9.2021. In affidavit dated 6.9.201, respondent No.1 has given explanation to ground No.h and k, which is as under:

“With reference to para 8(h), it is submitted that, detenu's representation dated 22.02.2021 regarding revocation of the order of detention and furnishing demanded documents was received in the Special Branch-3B Desk of Home Department on 08.03.2021 through the Superintendent, Akola District Prison, Akola vide letter dated 04.03.2021. After considering, the remarks of Detaining authority dated 26.04.2021 and all the materials and fact of the case, it is found that, all the relevant and vital documents had already been provided to detenu at the time of detention by Detaining authority. The Additional Chief Secretary (Home) considered the representation of the detenu and the remarks of the Detaining Authority and rejected the representation on 28.04.2021 by applying his mind. And the rejection of representation was communicated by speed post to the detenu vide letter dated 28-04-2021 through the registry section of Home Department.

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With reference to para 8(k), it is submitted that, representation of detenue dated 22.02.2021 was received in the Special Branch-3B Desk of Home Department on 08.03.2021 though the Superintendent, Akola District Prison, Akola vide letter dated 04.03.2021. Thereafter, remarks were called for from the Detaining Authority i.e. District Magistrate Akola on the same day i.e. 08.03.2021 by Special Branch-3B Desk. The remarks of the Detaining Authority were received on 26-04-2021 vide letter dated 26-04-2021 via e-mail. The concerned Section Officer submitted file containing remarks of Detaining Authority alongwith the representation of the detenue to the Additional Chief Secretary (Home) on 27.04.2021. The Additional Chief Secretary (Home) considered the representation of the detenue and the remarks of the Detaining authority and rejected the representation on 28.04.2021 by applying his mind. The rejection of representation was communicated by speed post to the detenu vide letter dated 28.04.2021 through the Registry section of Home Department. Thus, the representation of the detenue was considered by the the State Government as expeditiously as possible. Thus, there is no substance in the say of the petitioner in this para.”

7. Learned counsel for the petitioner submitted that there is gross and unexplained delay in consideration of representation of the petitioner by the State of Maharashtra which has caused prejudice to the petitioner and has taken away right of effective representation under Article 22(5) of the Constitution of

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India. She placed reliance in cases of Rama Dhondu Borade vs. V.K.Saraf, Commissioner of Police and ors, reported at (1989)3SCC 173. She also submitted a specific request was made by the petitioner to supply vital documents relied in CR No.666/2020 which contained statements of informant and her husband along with other witnesses, seizure panchanama and search panchanama. It is submitted that in spite of request, said documents were not supplied to the petitioner taking away right under Article 22(5) of the Constitution of India.

8. Learned Additional Public Prosecutor for the State supported the detention order and submitted that respondent No.1 by filing reply dated 6.9.2021 has sufficiently explained ground Nos.h and k raised in the petition. It is submitted that all relevant and vital documents have already been provided to the detinue at the time of detention by the detaining authority. It is submitted that the delay in consideration of the representation of the detinue has been explained by the authority by stating that the representation was received on 8.3.2021 and immediately remarks were called from the detaining authority. The remarks of the

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detaining authority were received on 26.4.2021 and on 28.4.2021 itself the representation of the detenue was rejected and, therefore, the delay in deciding the representation has been sufficiently explained by the respondents.

9. We have carefully considered the detention order passed by the detaining authority along with both replies filed by respondents. Insofar as ground No.k is concerned, it is not disputed that the representation filed by the detenue was received by the Home Department on 8.3.2021. Though respondents have explained in their affidavits that on the same day the representation was sent for explanation to the detaining authority and the detaining authority has submitted its reply on 26.4.2021. In our opinion, reason mentioned in the reply for causing delay in consideration of the representation by the detaining authority is far from being sufficient . The question of delay in deciding the representation of the detenue in preventive detention matter is no longer re integra in view of various judgments of the Hon'ble Apex Court and this Court. A coordinate bench of this Court in recent judgment in W.P.No.2095/2021 (Shubham Anil Ghadge vs. The

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Commissioner of Police, Pune City and ors) after considering various judgments of the Supreme Court held that the delay on the part of authorities to offer explanation cannot be said to be sufficient explanation. In the facts of the said case, there was delay of 16 days in offering explanation. The coordinate bench of this Court held that said delay affected personal liberty of the citizens. The coordinate bench of this Court therefore of the opinion that there is undue and explained delay.

10. In the facts of the present case also, we are satisfied that the delay on the part of the detaining authority to submit its remarks from 8.3.2021 till 26.4.2021 is not satisfactorily explained by the respondents in deciding the representation of the petitioner.

11. So far as ground No.h is concerned, the explanation given by the respondent in its reply is to the effect that all relevant and necessary documents were supplied to the petitioner by the detaining authority before passing of order of detention. The ground raised by the petitioner is specific wherein it is stated that statement of informant and her husband along with other

witnesses, seizure panchnama relied in CR NO.666/2020 were not supplied to the petitioner. There is no satisfactory reply filed by the respondents to the said ground. The respondents have not stated that documents which were requested by the petitioner were supplied to the petitioner. It is also not case of the respondents that documents which were requested by the petitioner were extraneous to the decision taken by the detaining authority. Therefore, we are satisfied that the order of detention suffers from vice of non-supply of relevant documents.

12. Cumulative effect of non-supply of documents and delay in deciding the representation of the petitioner has made the order of detention unsustainable in the eye of law.

13. In this view of the matter, we pass following order:

ORDER

(1) The criminal writ petition is allowed.

(2) The impugned order dated 11.12.2020 bearing No.Desk-2/HA/Home/WS-798/2020, which is confirmed by order dated

Judgment

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21.1.2021 issued by respondent No.2, is hereby quashed and set aside.

(3) The petitioner shall be released forthwith, if not required to be detained in any other offence

JUDGE

JUDGE

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